

REMARKS

Applicants thank Examiner Pillai for the telephone conference on August 26, 2009 and for the Examiner's thoughtful consideration of this case. This Application has been carefully reviewed in light of the Office Action. To clarify various aspects of inventive subject matter, Applicants amend Claims 17-21, 24-28, and 31-38. To advance prosecution of this application, Applicants have responded to each notation by the Examiner. Applicants submit that all of the pending claims are allowable over the cited references. Applicants respectfully request reconsideration and favorable action in this case.

Interview Summary

Applicants' attorneys conducted a telephonic conference with the Examiner on August 26, 2009. Pursuant to M.P.E.P. § 713.04, Applicants submit this summary of the telephone interview to record Applicants' understanding of the substance of the interview. If Applicants' understanding is inaccurate, notice of such is appreciated.

During the interview, Applicants and the Examiner discussed alternative claim amendments that the Examiner indicated may overcome the rejection under 35 U.S.C. § 101. In addition, Applicants and the Examiner discussed International Publication No. 00/73941 A2 to Yalcinalp et al. ("*Yalcinalp*") and independent Claim 17.

Section 101 Rejections

The Examiner rejected Claims 31-36 under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter. Without conceding the veracity of the rejections, and solely for the purpose of advancing prosecution, Applicants have amended independent Claim 31 to recite a system comprising "a computer-readable memory storing a GUI data manager operable, when executed, to" Applicants respectfully submit that Claim 31 recites statutory subject matter at least because the claimed "GUI data manager" is structurally and functionally interrelated to the claimed "computer-readable memory."¹

¹ According to the M.P.E.P., "When functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized." M.P.E.P. § 2106.01.

Section 103 Rejections

The Examiner rejected Claims 17-32 and 34-36 under 35 U.S.C. § 103(a) over *Yalcinalp* and U.S. Publication No. 2001/0056460 A1 to Sahota et al. (“*Sahota*”). Claim 33 is rejected under 35 U.S.C. § 103(a) over *Yalcinalp*, *Sahota* and U.S. Patent No. 6,826,597 to Lonnroth et al (“*Lonnroth*”). Applicants respectfully traverse these rejections for at least the reasons below.

A. The Obviousness Standard

The question raised under 35 U.S.C. § 103 is whether the prior art taken as a whole would suggest the claimed invention taken as a whole to one of ordinary skill in the art at the time of the invention. “To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. All words in a claim must be considered in judging the patentability of that claim against the prior art.” *M.P.E.P.* § 2143.03 (citations omitted). In addition, even if all elements of a claim are disclosed in various prior art references, which is certainly not the case here as discussed below, the claimed invention taken as a whole still cannot be said to be obvious without some reason why one of ordinary skill at the time of the invention would have been prompted to modify the teachings of a reference or combine the teachings of multiple references to arrive at the claimed invention.

The controlling case law, rules, and guidelines repeatedly warn against using an applicants’ disclosure as a blueprint to reconstruct the claimed invention. For example, the *M.P.E.P.* states, “The tendency to resort to ‘hindsight’ based upon applicants’ disclosure is often difficult to avoid due to the very nature of the examination process. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art.” *M.P.E.P.* § 2142.

The U.S. Supreme Court’s recent decision in *KSR Int’l Co. v. Teleflex, Inc.* reiterated the requirement that Examiners provide an explanation as to why the claimed invention would have been obvious. *KSR Int’l Co. v. Teleflex, Inc.*, 127 S.Ct. 1727 (2007). The analysis regarding an apparent reason to combine the known elements in the fashion claimed in the patent at issue “should be made explicit.” *KSR*, 127 S.Ct. at 1740-41. “Rejections on

obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.* at 1741 (internal quotations omitted).

The examination guidelines issued by the United States Patent and Trademark Office (“PTO”) in response to the *KSR* decision further emphasize the importance of an explicit, articulated reason why the claimed invention is obvious. Those guidelines state, in part, that “[t]he key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR* noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit.” *Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in View of the Supreme Court Decision in KSR International Co. v. Teleflex Inc.*, 72 Fed. Reg. 57526, 57528-29 (Oct. 10, 2007) (internal citations omitted). The guidelines further describe a number of rationales that, in the PTO’s view, can support a finding of obviousness. *Id.* at 57529-34. The guidelines set forth a number of particular findings of fact that must be made and explained by the Examiner to support a finding of obviousness based on one of those rationales. *See id.*

Furthermore, the M.P.E.P. explicitly states, “[a] prior art reference that ‘teaches away’ from the claimed invention is a significant factor to be considered in determining obviousness.” *M.P.E.P.* § 2145 (X)(D)(1); *see also KSR*, 127 S.Ct at 1739 (when the prior art teaches away from combining certain known elements, discovery of a successful means of combining them is more likely to be nonobvious).

B. The Proposed *Yalcinalp-Sahota* Combination Fails to Disclose, Teach, or Suggest Each and Every Limitation Recited in Independent Claims 17, 24, and 31

Applicants submit that amended Claim 17 is patentable over *Yalcinalp* in view of *Sahota*. Among other features, amended Claim 17 recites, in part:

- determining a security credential of a user associated with the request;
- comparing, for each of the at least two of the plurality of GUI nodes, the access right property representing

the group of users who have access to the GUI node to the determined security credential of the user associated with the request;

- identifying, based at least in part on the comparing, a subset of the plurality of GUI nodes that the user is authorized to access;

Yalcinalp and *Sahota*, whether considered alone or in combination, fail to disclose a number of elements of amended Claim 17. For example, nowhere does *Yalcinalp* contemplate “determining a security credential of a user associated with the request” or “comparing, for each of the at least two of the plurality of GUI nodes, the access right property representing the group of users who have access to the GUI node to the determined security credential of the user associated with the request.” Moreover, *Yalcinalp* fails to disclose, teach, or suggest “identifying, based at least in part on the comparing, a subset of the plurality of GUI nodes that the user is authorized to access.”

The Examiner contends that registry 308 of *Yalcinalp* comprises a plurality of GUI nodes. *Office Action*, p. 3. According to *Yalcinalp*, the registry contains “various XSL transformations for clients [410], configurations [406], and applications [402].” *Yalcinalp*, p. 10, ll. 4-5. During the interview, the Examiner explained the Examiner’s position that the XSL transformations 410, configurations 406, and/or applications 402 disclose the “plurality of GUI nodes” recited in Claim 17. Applicants respectfully disagree. To the extent *Yalcinalp* discloses using the XSL transformations, configurations, and applications to return an XML document “in a suitable format,” this discussion is limited applying transformations to the XML document “based on the client type.” *See, e.g., Yalcinalp*, p. 5, ll. 23-24; p. 7, ll. 6-29. The client type is determined by “a header string [that] contains parameters, such as client name, version number, OS type, version number [sic], or OS name.” *Yalcinalp*, p. 11, ll. 2-4. Merely formatting an XML document based on the type of client requesting the document, however, fails to teach or suggest identifying, based on a comparison to a security credential of a user, a subset of the plurality of GUI nodes that the user is authorized to access. Indeed, nowhere does *Yalcinalp* even contemplate a security credential for a user associated with the request.

Moreover, *Yalcinalp* arguably teaches away from identifying, based on a comparison to a security credential of a user, a subset of the plurality of GUI nodes that the user is authorized to access. For example, *Yalcinalp* discloses “[e]ach time a client requests an XML document from an application, the transformation registry service provides an appropriate transformation for that client and document based on *a best possible configuration that applies to the client.*” See, e.g., *Yalcinalp*, p. 7, ll. 28-29; see also p. 6, ll. 3-11. In addition, *Yalcinalp* discloses that each client identifier “*must* be mapped to a canonical form for searching or matching.” *Yalcinalp*, p. 11, ll. 13-15 (emphasis added). Because *Yalcinalp* requires canonical mappings based on the best possible configuration that applies to the client type, *Yalcinalp* teaches away from any combination that limits what is provided based on a comparison to a determined security credential of a user associated with a request. For at least these reasons, *Yalcinalp* cannot properly be combined with *Sahota* to establish *prima facie* obviousness. Thus, *Yalcinalp* fails to disclose or suggest “determining a security credential of a user associated with the request; comparing, for each of the at least two of the plurality of GUI nodes, the access right property representing the group of users who have access to the GUI node to the determined security credential of the user associated with the request;” [and] identifying, based at least in part on the comparing, a subset of the plurality of GUI nodes that the user is authorized to access” as recited in amended Claim 17.

The *Sahota* reference fails to atone for the deficiencies of the *Yalcinalp* reference. For example, nowhere does *Sahota* contemplate that a “determining a security credential of a user associated with the request” or “comparing, for each of the at least two of the plurality of GUI nodes, the access right property representing the group of users who have access to the GUI node to the determined security credential of the user associated with the request.” Moreover, *Sahota* fails to disclose, teach, or suggest “identifying, based at least in part on the comparing, a subset of the plurality of GUI nodes that the user is authorized to access.” Indeed, the Examiner fails to indicate any portion of *Sahota* allegedly disclosing such limitations. Thus, *Sahota* fails to disclose or suggest “determining a security credential of a user associated with the request; comparing, for each of the at least two of the plurality of GUI nodes, the access right property representing the group of users who have access to the GUI node to the determined security credential of the user associated with the request;” [and]

identifying, based at least in part on the comparing, a subset of the plurality of GUI nodes that the user is authorized to access” as recited in amended Claim 17.

Applicants submit that independent Claim 17 is patentable over the proposed *Yalcinalp-Sahota* combination for at least the reasons discussed above. Thus, Applicants respectfully request withdrawal of the rejection and full allowance of Claim 17 and all claims depending therefrom.

Applicants submit that independent Claims 6 and 11 are patentable over the proposed *Yalcinalp-Sahota* combination for at least analogous reasons to those discussed above. Thus, Applicants respectfully request withdrawal of these rejections and full allowance of Claims 24 and 31, and all claims depending therefrom.

C. No Prima Facie Case for Obviousness for the Proposed *Yalcinalp-Sahota* Combination

The rejection of Applicants’ claims is also improper because the Examiner has failed to establish a *prima facie* case for obviousness with respect to Claims 17-32 and 34-36 based on the teachings of *Yalcinalp* and *Sahota*.

“It is improper to combine references where the references teach away from their combination.” *M.P.E.P.* § 2145. As discussed above, *Yalcinalp* teaches that “[e]ach time a client requests an XML document from an application, the transformation registry service provides an appropriate transformation for that client and document based on *a best possible configuration that applies to the client*.” See, e.g., *Yalcinalp*, p. 7, ll. 28-29; see also p. 6, ll. 3-11. (emphasis added). Accordingly, *Yalcinalp* arguably teaches away from any combination that limits what is provided based on a determined security credential of a user associated with a request. For at least these reasons, *Yalcinalp* cannot properly be combined with *Sahota* to establish *prima facie* obviousness.

Moreover, the Examiner relies on hindsight analysis, using Applicants’ claims as a roadmap for selecting portions. See *M.P.E.P.* § 2142; *KSR*, 127 S.Ct. at 1740-41; *Examination Guidelines*, 72 Fed. Reg. at 57528-29. It is improper, however, for an Examiner to use hindsight having read the Applicants’ disclosure to arrive at an obviousness rejection.

In re Fine, 837 F.2d 1071, 1075, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988). In addition, it is improper to use the claimed invention as an instruction manual or template to piece together the teachings of the prior art so that the claimed invention is rendered obvious. *In re Fritch*, 972 F.2d 1260, 23 U.S.P.Q.2d 1780 (Fed. Cir. 1992). In the instant case, the Examiner has pieced together disjointed portions of references in an effort to attempt to reconstruct Applicants' claims with the benefit of hindsight.

For at least these reasons, Applicants respectfully submit that the Examiner's obviousness rejections are improper.

D. Conclusion

For at least these reasons, Applicants respectfully request reconsideration and allowance of independent Claim 17 and its dependent claims. For at least certain analogous reasons, Applicants respectfully request reconsideration and allowance of independent Claims 24 and 31.

E. Dependent Claims

Dependent Claims 18-23, 25-30, 32 and 34-36 depend from independent Claims 17, 24, and 31, which Applicants have shown above to be allowable over *Yalcinalp-Sahota*. Thus, dependent Claims 18-23, 25-30, 32 and 34-36 are allowable at least because they depend from allowable independent claims. Additionally, dependent Claims 18-23, 25-30, 32 and 34-36 recite further patentable distinctions over the references cited by the Examiner. To avoid burdening the record and in view of the clear allowability of independent Claims 17, 24, and 31 Applicants do not specifically discuss these distinctions in this Response. However, Applicants reserve the right to discuss these distinctions in a future Response or on Appeal, if appropriate. Additionally, Applicants do not admit that the proposed *Yalcinalp-Sahota* combination is even possible or that the Examiner has shown the clear articulation of the reason(s) why the claimed invention would have been obvious to one of skill in the art to combine or modify these references in the manner the Examiner proposes.

No Waiver

All of Applicants' arguments and amendments are without prejudice or disclaimer. Additionally, Applicants have merely discussed example distinctions from the *Yalcinalp* and *Sahota* references. Other distinctions may exist, and Applicants reserve the right to discuss these additional distinctions in a later Response or on Appeal, if appropriate. By not responding to additional statements made by the Examiner, Applicants do not acquiesce to the Examiner's additional statements. The example distinctions discussed by Applicants are sufficient to overcome the anticipation and obviousness rejections.

CONCLUSION


Applicants have made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons readily apparent, Applicants respectfully request full allowance of all pending claims.

If the Examiner feels that a telephone conference or an interview would advance prosecution of this Application in any manner, the undersigned attorney for Applicants stands ready to conduct such a conference at the convenience of the Examiner.

Applicant believes no fees to be due. However, the Commissioner is hereby authorized to charge any deficiency or credit any overpayment to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

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